**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **GARY B. HALL, INDIVIDUALLY, AND AS REPRESENTATION OF A CLASS** | : | |
| | : | **CIVIL ACTION** |
| **v.** | : | |
| | : | **NO. 99-3108** |
| **MIDLAND GROUP AND MIDFIRST BANK a/k/a MIDLAND MORTGAGE COMPANY SSB** | : | |

**MEMORANDUM ORDER**

Presently before the court is plaintiff's unopposed Motion for Preliminary Approval of Settlement. Plaintiff seeks provisional certification of a class pursuant to Fed. R. Civ. P. 23(b)(3) for the purpose of settlement and preliminary approval of the parties' settlement agreement of October 28, 1999.

The essence of the allegations of the representative plaintiff is that defendant Midland engaged in the forced placement of hazard insurance through agencies owned by affiliates for residential properties with mortgages serviced by Midland and debited the affected mortgagors' escrow accounts in the amount of excessive, inflated and unauthorized premiums charged by the affiliates which received commissions for these placements. Plaintiff has asserted numerous claims including breach of contract, breach of a duty of good faith and fair dealing, fraud, unfair trade practices, and violations of the federal Fair Debt Collection Practices Act and the civil RICO

statute. The proposed class consists of those mortgagors for whom Midland obtained forced placement of such insurance over the past twenty years. Three subclasses are proposed reflecting the time periods in which the insurance was obtained and the pendency or non-pendency of current premium assessments.

A class may be conditionally certified even for the purpose of settlement only if it conforms to the requirements of Rule 23. See Amchem Products, Inc. v. Windsor, 117 S. Ct. 2231, 2248 (1997); In re Prudential Ins. Co. v. America Sales Litigation, 148 F.3d 283, 307-08 (3d Cir. 1998). While the settlement class must satisfy each of the requirements of Rule 23(a) and 23(b)(3), the fact of settlement is relevant to a determination of whether the proposed class meets the requirements imposed by the Rule. Id. Rule 23(a) requires that the proposed class satisfies the criteria of numerosity, commonality, typicality and adequacy of representation.

In evaluating a settlement for preliminary approval, the court determines whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and whether it appears to fall within the range of possible approval. See In re Prudential Securities Incorporated Limited Partnerships Litigation, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)

(citing Manual for Complex Litigation § 30.41 at 237 (3d ed. 1995)).

Numerosity is satisfied when the class is so numerous that joinder of all class members is impracticable. See In re Prudential Ins., 148 F.3d at 309. Joinder of each of the thousands of class members would be impracticable. See Weiss v. York Hosp., 745 F.2d 786, 809 n.35 (3d Cir. 1984) (numbers exceeding one hundred will generally sustain numerosity requirement), cert. denied, 470 U.S. 1060 (1985).

Commonality is satisfied when there are questions of law or fact common to the class but does not require an identity of claims or a lack of "factual differences among the claims of the putative class members." In re Prudential, 148 F.3d at 310. The alleged existence of a common unlawful practice generally satisfies the commonality requirement. See Anderson v. Dep't. of Public Welfare, 1 F. Supp.2d 456, 461 (E.D. Pa. 1998). There are common questions of fact and law as the suit challenges a standard practice and the same legal standards govern each class member’s claims.

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." See Georgine v. Amchem Products, Inc., 83 F.3d 610, 631 (3d Cir. 1996). The claims of the representative are typical as they and the claims of each class member are advanced under

the same legal theories and arise from the same practice or course of conduct. See Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 923 (3d Cir. 1992).

Adequacy of representation requires that the interests of the named plaintiffs are aligned with those of the absentees and that the class counsel is qualified and generally able to conduct the litigation in the interest of the entire class. See Georgine, 83 F.3d at 630. There is no apparent conflict of interests between the representative plaintiff and other class members. Class counsel appear to have the experience and skill ably to represent the proposed class.

Rule 23(b)(3) sets forth the additional requirements of predominance and superiority. Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Products, 117 S. Ct. at 2249. The predominance requirement is generally satisfied in cases alleging a pattern of consumer fraud. See Amchem, 117 S. Ct. at 2250. This suit which challenges the use of virtually identical methods employed with regard to each class member falls into such a category. Common questions of law and fact predominate because of the virtually identical factual and legal predicates of each class member's claims.

"The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action

against those of alternative available methods of adjudication." In re Prudential Ins., 143 F.3d at 316 (quotations omitted). Any interest of members of the class in individually controlling the prosection of separate actions, see Rule 23(b)(3)(A), is significantly outweighed by the efficiency of the class mechanism given the size of the class and the relatively modest size of each individual damage claim. See id. (modest size of individual claims suggests class procedure is superior). There is pending in the Southern District of Georgia a motion for class certification filed over a year ago in similar litigation against Midland Mortgage Company. See Rule 23(b)(3)(B). The proposed class in that case appears to be narrower than the one in the instant case. Even if certification is granted, the court does not believe that the pendency of the Georgia case precludes certification and preliminary approval in this case. See Blair v. Equifax Check Services, Inc., 181 F.3d 832, 838 (7th Cir. 1999). This district appears to be as appropriate a forum as any in which to concentrate the claims presented in this case. See Rule 23(b)(3)(C). Potential management problems at trial need not be considered because this is a settlement class. See Amchem Products, 117 S. Ct. at 248. Moreover, no such problems are apparent.

The proposed settlement appears to reflect substantial informed arms-length negotiations. It does not improperly grant

preferential treatment to the class representative or any segment of the class. It provides for payments pursuant to a formula which appears to be fair to all class members. The proposed agreement provides for the division of and payment of legal fees and expenses from a fixed fund. While the court cannot now determine the precise number of claimants or the fees and expenses which may reasonably be sought, it appears that the amount likely available to class members is within the range of possible approval.

Counsel propose to provide notice by broad national publication, as well as direct mailings to Subclass I and II members at their last address as maintained in defendants' records. Particularly given the size of the class and scope of the class period, this appears to be the best notice practicable in the circumstances, see Rule 23(c)(2), and to comport with the requirements of due process.

**ACCORDINGLY**, this day of November, 1999, upon consideration of plaintiff's Motion for Preliminary Approval of Settlement (Doc. #4), **IT IS HEREBY ORDERED** that said Motion is **GRANTED**.

**BY THE COURT:**

**JAY C. WALDMAN, J.**